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Paper No. 15

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JAN 29 2003

In re Application of:

Hawks *et al.*

Serial No.: 09/413,552

Filed: October 06, 1999

Attorney Docket No.: 50944.2300

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision in response to the communication filed September 24, 2002. The communication has been treated as a petition under 37 C.F.R. § 1.181¹, to withdraw the holding of abandonment in the above-identified application, for which no petition fee is required.

The petition is **DISMISSED**.

A non-final Office action was mailed on January 30, 2002. Application became abandoned on May 01, 2001.

Petitioner states that counsel did not receive the Office action. The petition includes a copy of the docket record where the non-received Office action would have been entered had it been received and docketed.

A review of the written record indicates that the Office action was mailed to the correspondence address provided by the applicant in the Declaration deposited with the application papers filed on October 06, 1999, which address does not correspond to petitioner's current address. This discrepancy suggests that this application may have become abandoned as a consequence of the Office action being mailed to an old, uncorrected address. A further review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to the correspondence address of record. Under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), this presumption

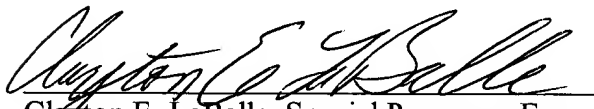
¹ Although the Office has mailed no Notice of Abandonment, the application became abandon by operation of law on May 01, 2002.

may be overcome by a showing that the Office communication was not received at the correspondence address of record.

The showing of record establishes only that the petitioner did not receive the Office action at the petitioner's current address. However, the Office action was not mailed to the petitioner's current address. Rather, the Office action was mailed to the correspondence address specified by the applicant in the Declaration. As such, it is immaterial that the petitioner has demonstrated that the Office action was not received at his current location. Petitioner must establish that the Office action was not received at the correspondence address provided in the Declaration. Since the petitioner has not made the requisite showing, the petition is dismissed.

Any request for reconsideration of this decision should be accompanied by a statement from the practitioner asserting to the fact that Office communications were being received by the practitioner at the correspondence address of record during the period in which the Office action would have been received, and a statement that a search of the file jacket and docket records indicates that the Office action was not received. **Any request for reconsideration must be submitted within TWO (2) MONTHS from the mailing date of this decision.**

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (703) 308-0519.


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